

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0185
Controlled Substance Excise Tax
For Tax Period 1998

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ISSUE

I. Controlled Substance Excise Tax—Validity of Assessment

Authority: IC 6-8.1-5-1; 45 IAC 15-5-3

Taxpayer protests the validity of the Department's assessment of Controlled Substance Excise Tax.

STATEMENT OF FACTS

Police reports were provided to the Indiana Department of Revenue ("Department"). The reports explained that taxpayer was found to be in possession of Psilocyn (Hallucinogenic Mushrooms). After the dismissal of criminal charges, the Department issued an assessment of Controlled Substance Excise Tax ("CSET"). Taxpayer protests this assessment. Taxpayer failed to attend the scheduled administrative hearing. Further facts will be supplied as necessary.

I. Controlled Substance Excise Tax—Validity of Assessment

DISCUSSION

Taxpayer protests the Department's assessment of CSET. Taxpayer states that the criminal charges for possession of Psilocyn against him were dropped due to mishandling of evidence by a lab technician, who was in turn charged with criminal conduct. Taxpayer believes that the inadmissibility of the evidence in the criminal courts strips the Department of its ability to use the evidence in its assessment.

The Department reminds taxpayer that the administrative hearing is not a court of law, and refers to 45 IAC 15-5-3(b)(7), which states:

The hearing will be conducted in an informal manner. The purpose of the hearing is to clearly establish the taxpayer's specific objections to the assessment and the reasoning for these objections. The hearing is not governed by any rules of evidence. The department is expressly excluded from the requirements of the Administrative Adjudication Act.

Next, the Department refers to IC 6-8.1-5-1(a), which states in relevant part:

If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available to the department.

Also, the Department refers to IC 6-8.1-5-1(b), which states in relevant part:

The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.

After reviewing the police reports, the Department issued its assessment. The Department routinely assesses excise taxes on items other than controlled substances, without physically examining the goods. In the instant case, the police reports are sufficient for the Department to issue its assessment.

Taxpayer's only other argument is that assessment of the CSET is inequitable due to his status as a student. Taxpayer explains that he is working as a graduate student and is saving his money to pursue a doctoral degree, and payment of the CSET would hamper the achievement of this goal. Taxpayer provides no citation to any court decision, statute, regulation or other legal source to support the use of a taxpayer's financial status as grounds for dismissing an assessment.

Therefore, the Department may base its assessment of CSET on the police reports, as explained in IC 6-8.1-5-1(a) and 45 IAC 15-5-3(b)(7). Taxpayer has not met the burden of proving the proposed assessment wrong, as required by IC 6-8.1-5-1(b). Taxpayer's status as a student and income level are irrelevant.

FINDING

Taxpayer's protest is denied.